v. *Calloway, supra; Philadelphia, etc., R. Co.* v. *Derby*, 14 How. 468. The Massachusetts view seems to be adopted in Pennsylvania, but in applying it to the facts in the particular case the court does not quite plumb the track. *Cody* v. *Venzie* (Pa.), 107 Atl. 383. This statement of the case is, however, distinctly repudiated in Maine, but the court states that from a given state of facts the same conclusion would probably be reached under both rules. *Avery* v. *Thompson, supra.*

The English authorities seem unsettled on the question. The early cases hold that gross negligence must be shown to permit recovery. See *Moffat* v. *Bateman*, 6 Moore, P. C. (N. S.) 370; *Lygo* v. *Neebold*, 9 Exch. 302. But these cases have been modified in the later decisions, and the distinction between property and personal gratuitous bailments pointed out. *Harris* v. *Perry & Co.*, L. R. [1903] 2 K. B. 219. A ruling following this case is in line with the weight of American authority, although the judge expressed doubt as to its soundness. *Karavias* v. *Gallinocas* (1917), 143 L. T. Jo. 237. (See L. R. A. 1918C, 277.)

The question seems not to have been presented to the Virginia courts. It is believed that all the cases on the subject at present adjudicated are cited above.

For further discussions as to the liabilities of owners and drivers of automobiles, see 2 VA. LAW REV. 189, 298, 624; 4 VA. LAW REV. 234; 6 VA. LAW REV. 544.

CONSTITUTIONAL LAW—DIVORCE—ALIMONY—IMPRISONMENT FOR NONPAYMENT.—The defendant contumaciously refused to pay temporary alimony decreed against him during a divorce suit brought by his wife. He gave no excuse save that his wife was of bad moral character. On the hearing, the divorce was granted with permanent alimony, and it was ordered that unless the arrears of temporary alimony were paid within fifteen days the defendant should be imprisoned for ten days. The defendant appealed. *Held*, the decree should be affirmed. *West* v. *West* (Va.), 101 S. E. 876.

By the better rule, alimony is not a debt within the meaning of statutes or constitutions prohibiting imprisonment for debt. *Ex parte Perkins*, 18 Cal. 60; *Smith* v. *Smith*, 81 W. Va. 761, 95 S. E. 199; *West* v. *West, supra. Contra, Leeder* v. *State*, 55 Neb. 133, 75 N. W. 541. *Coughlin* v. *Ehlert*, 39 Mo. 285. But imprisonment for non-payment of alimony should not be resorted to unless it appears that the defendant is contumacious. *Ex parte Silvia*, 123 Cal. 293, 55 Pac. 988, 69 Am. St. Rep. 58. See *West* v. *West, supra.*

Payment of counsel fees and expenses in a divorce suit may also be enforced by an attachment for contempt. *Van Dyke* v. *Van Dyke*, 125 Ga. 491, 54 S. E. 537. And under some statutes, the court may require the husband to give security for the payment of alimony and upon his refusal to do so may imprison him for contempt. *Wright* v. *Wright*, 74 Wis. 439, 43 N. W. 145.

While a husband who derives an income from any trade, profession or employment may be forced to pay alimony from such source, yet the courts cannot force a defendant to work, and, *a fortiori*, they can-

not undertake to compel a defendant who has no trade, profession or employment to acquire one. *Ex parte Todd*, 119 Cal. 57, 50 Pac. 1071; *Messervy* v. *Messervy*, 85 S. C. 189, 67 S. E. 130, 30 L. R. A. (N. S.) 1001, 137 Am. St. Rep. 873. In short, the correct and general rule seems to be that when a court has decreed alimony (including expenses and security) against a defendant, it may commit him to prison if he has the means wherewith to pay the alimony and contumaciously refuses to do so; but it cannot commit him if he is unable to pay, nor can it compel him to work in order to acquire the means for payment. See authorities *supra*. The principal case seems in accord with this rule.

CONTRACTS—ACCEPTANCE—SUGGESTED MODIFICATION.—In a controversy over the exchange of certain property, the plaintiffs wrote to the defendant making several propositions of settlement. The defendant replied, making a counter proposition, but saying that there was nothing for him to do but accept one of the settlements offered by the plaintiff, and naming the one he desired. The plaintiffs brought an action according to the terms of their proposition. *Held*, the defendant's reply amounted to an acceptance. *Foster* v. *West Publishing Co.* (Okla.), 186 Pac. 1083.

It is a positive principle of law that an acceptance must not be conditional or vary from the offer, for then it will be construed as a counter proposal. 9 CYC. 267. But if the offer is accepted as made, the acceptance is not conditional or does not vary from the offer merely because of extraneous inquiries attached to the acceptance, such as whether or not the offeror will alter his terms. See *Turner* v. *McCormick*, 56 W. Va. 161, 49 S. E. 28, 67 L. R. A. 853, 107 Am. St. Rep. 904; *Culton* v. *Gilchrist*, 92 Iowa 718, 61 N. W. 384. However, the courts seem to differentiate between requests and inquiries. A request for a change or modification of a proposed contract, made *before* acceptance thereof, will amount to a rejection of the offer and constitute a new proposal. *Burmester* v. *Phillips*, 25 Fed. 805. A mere inquiry whether the offeror will alter his terms *before* acceptance does not amount to a rejection of the offer, and an acceptance within a reasonable time will constitute a binding contract. *Stevenson* v. *McLean*, L. R. 5 Q. B. D. 346. See BENJAMIN, SALES, § 39.

An unqualified acceptance of the offer, together with a *contemporaneous* request to modify the terms of the offer constitutes a binding contract. *Wilkins* v. *Vass Cotton Mills*, 176 N. C. 72, 97 S. E. 151; *Culton* v. *Gilchrist*, *supra*; *Brown* v. *Cairns*, 63 Kan. 693, 66 Pac. 1033; *Phillips* v. *Moor*, 71 Me. 78. So an acceptance may be complete, though it expresses dissatisfaction at some of the terms, as long as it is a mere "grumbling assent" and not a dissent. *Joyce* v. *Swan*, 17 C. B. N. S. 84; *Eames* v. *Home Insurance Co.*, 94 U. S. 621; *Johnson* v. *Federal Union Surety Co.*, 187 Mich. 454, 153 N. W. 788. The instant case is on all fours with these cases last cited.

Nor is an acceptance made conditional by the addition of words that are immaterial. *Clark* v. *Dales*, 20 Barb. (N. Y.) 42; *Matteson* v. *Sco-*